

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JOHN L. DYE, JR.,

Plaintiff,

Case No. 06-C-634

v.

BYRON BARTOW,

Defendant.

ORDER

The plaintiff, a state prisoner proceeding *pro se*, filed a petition for writ of mandamus under 28 U.S.C. § 1361 and has requested leave to proceed in forma pauperis. Pursuant to the Prison Litigation Reform Act (PLRA), the plaintiff is required to pay the statutory filing fee of \$350.00 in full for this action. *See* 28 U.S.C. § 1915(b)(1).

Under the PLRA, which amended the *in forma pauperis* statute, the court must assess an initial partial filing fee of twenty percent of the average monthly deposits to the plaintiff's account or average monthly balance in the plaintiff's prison account for the six-month period immediately preceding the filing of the petition, whichever is greater. *Id.* After the initial fee is paid, the prisoner must make monthly payments of twenty percent of the preceding month's income until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). The agency which has custody of the prisoner will collect the money and send payments to the court. *Id.* No payment is required in months when the prisoner's preceding month's income is \$10.00 or less. *Id.*

The plaintiff filed a certified copy of his prisoner trust account statement for the six-month period immediately preceding the filing of the petition as required under 28 U.S.C. § 1915(a)(2). This account statement shows the activity in the plaintiff's prison account for the past six months.

A review of this information reveals that, for the six-month period immediately preceding the filing of the instant petition, the average monthly deposit to the plaintiff's prison account was \$6.93 and the average monthly balance to the account was \$0.05. Thus, in accordance with the provisions of 28 U.S.C. § 1915(b)(1), the plaintiff is required to pay an initial partial filing fee of \$1.39. The plaintiff shall pay the initial partial filing fee of \$1.39 to the clerk of this court within 21 days of the date of this order.

The PLRA also provides that if a prisoner files more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim upon which relief can be granted, the prisoner will be prohibited from bringing any other actions *in forma pauperis*, unless the prisoner is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). In the event that his action is later dismissed for any of the above reasons, it will have an impact on the prisoner's ability to bring other actions *in forma pauperis*. Accordingly, the plaintiff will be afforded an opportunity to voluntarily dismiss this action to avoid incurring a "strike" under section 1915(g).

Notice to Plaintiff: If you do not wish to pay the filing fee as set forth in this order or do not wish to proceed with this action to avoid incurring a 'strike' under §1915(g), you must notify the court by writing a letter to the clerk within 21 days of the date of this order, stating that you do not wish to prosecute this civil action. If you write such a letter, this case will be dismissed without prejudice. Voluntary dismissal will not be counted as a "strike" under §1915(g).

NOW, THEREFORE, IT IS HEREBY ORDERED that within 21 days of the date of this order, the plaintiff shall forward to the clerk of this court the sum of \$1.39 as an initial partial filing fee in this action.

Upon payment of the initial partial filing fee, the court will determine whether the action can continue to proceed *in forma pauperis*. The court will review the petition to determine that the action is not frivolous or malicious and that the petition states a claim upon which relief can be granted. If the petition does not meet this standard, the action will be dismissed.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated at Milwaukee, Wisconsin this 1st day of June, 2006.

BY THE COURT

s/ **Rudolph T. Randa**

HON. RUDOLPH T. RANDA
Chief Judge